

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of Low Power Radio Service)	MM Docket No. 99-25
)	
To: The Commission		

COMMENTS OF CATHOLIC RADIO ASSOCIATION

The Catholic Radio Association (“CRA”), by counsel, hereby submits its Comments responsive to various developments and proposals in the above-captioned matter following submission of the Prometheus Proposal¹ and enactment of the Local Community Radio Act of 2010 (the “Act”),² ongoing efforts to resolve the voluminous pending applications for new FM translator facilities, and an anticipated announcement of a filing window for applicants seeking to launch new low power FM (“LPFM”) facilities.

As explained below, the number of CRA members that are expected to apply for new LPFM facilities is likely to number in the hundreds. Each of these applicants, if successful in its efforts to secure spectrum rights, will add significantly to the diversity of programming in its local radio market by introducing the Catholic programming format where in all likelihood it does not yet exist. Foremost among CRA’s concerns is that adequate spectrum be preserved for LPFM licensing opportunities in the greatest number of communities, and that these opportunities not be subjected to needless and lengthy

¹ *Memorandum of Agreement between Educational Media Foundation and Prometheus Radio Project*, MM Docket No. 99-25 (filed September 22, 2010)

² Local Community Radio Act of 2010, HR 6533, 111th Congress, 2nd Session.

delays due to litigation over the methodology adopted by the agency in order to process efficiently the large number of pending FM translator applications.

BACKGROUND

CRA serves as the trade association for radio station licensees and applicants (among others)³ who provide, or who wish to provide, Catholic programming in their local communities. Just a few years ago, very few radio stations offered substantial amounts of Catholic programming. Today, CRA members operate in more than 150 communities across America, and dozens of additional CRA members (and potential members) are in the process of building new noncommercial educational (“NCE”) FM facilities as a result of spectrum rights secured in the October 2007 Filing Window. Many more Catholic radio apostolates in urban markets -- where congested spectrum bars the authorization of new radio stations -- are attempting to launch Catholic program formats on existing stations. This phenomenal growth of Catholic radio reflects an enthusiastic response to the 1997 endorsement of radio as an evangelistic tool by the recently beatified Blessed John Paul the Great (Pope John Paul II).

The explosive growth of the Catholic radio format presents a genuine opportunity to dramatically increase the availability of a unique radio format not historically present in most communities. Although most noncommercial educational formats air inspirational music from a religious perspective or news-talk programming from a secular

³ Working on behalf of official Church institutions, as well as ministries founded and operated by lay members, CRA supports the efforts of Catholic radio programming producers, distributors, and broadcasters alike. Association members include not only broadcast licensees but also program providers and several (Arch)dioceses. An Episcopal Advisory Board supports CRA’s efforts to operate in a manner true to the inherited body of authoritative Catholic teachings.

perspective, Catholic radio offers listeners a predominantly talk format that is both intellectually robust and profoundly influenced by faith. This programming format is uniquely responsive to listeners and fills a void for this underserved minority that is not otherwise met by other broadcasters.

In many small rural communities where the local populations are small, as well as in many urban centers where new full power FM stations cannot be authorized, the barriers to entry for would-be Catholic broadcasting organizations are simply too great to overcome. LPFM facilities offer the most economical way to provide greater programming diversity to populations that are craving new choices. However, especially in the current economic climate, the FCC can best satisfy the directives of the Act by taking steps to maximize spectrum available for LPFM facilities and for the resulting facilities to be economically viable.

COMMENTS

The most significant hindrance to the more widespread deployment of new LPFM facilities has been two-fold: (1) the need to process an onerous number of pending applications for new FM translator facilities so that available frequencies are in fact understood by prospective applicants as being available (the “Translator Issue”), and (2) the need to make spectrum available by allowing the agency to recognize that LPFM facilities will not cause objectionable interference to second adjacent and third adjacent full power facilities (the “Protection Issue”). We add to these considerations a third category, the prolonger economic downturn creating a particular challenge to low power broadcasters in rural areas where such obstacles can most easily be overcome by easing

power restrictions in the service. We submit the FCC can take official notice of the particularly poor performance of the economy and the financial duress that all broadcasters are facing. The FCC can also recognize that under the best of economic conditions, rural LPFM facilities are an endangered species of sorts inasmuch as limited coverage makes it more difficult to attract significant financial support for ongoing operations. We refer to this third issue as the “Viability Issue”.

To address these issues efficiently and with the least risk of inordinate litigation and lengthy delay, CRA proposes as follows:

I. The Translator Issue.

In the wake of the enactment of the Act, a growing consensus seems to have emerged. That is, the recent comments and *ex parte* participation in this proceeding appear to agree that previous proposals for limiting to ten the number of FM translator applications that will be processed by the agency staff with respect to any single applicant is simply not going to a sufficient remedy to the Act’s calls for spectrum to be made available for LPFM facilities in all communities, even if participants in the proceeding disagree as to whether this issue must be addressed before a LPFM Filing Window can be announced.⁴

CRA finds generally attractive the EMF-Prometheus proposal of July 2010 wherein they urged that a LPFM Filing Window be opened without first processing the FM translator applications. However, the proposal was premised on LPFM applications

⁴ See, e.g., *Letter from Common Frequency*, MM Docket 99-25 (filed September 27, 2010).

not having to protect pending FM translator applications. We are not convinced that this can be achieved without inviting litigation as to the *post facto* change essentially to add new applications into a mix after the cut-off date has passed. Regardless of the merits of such litigation, the end result would be potentially lengthy delay and paralysis.

We emphasize that Section 5 of the Act certainly provides a basis for distinguishing between the equality of treatment to be afforded to LPFM and FM translator “stations” and “licenses”, as opposed to the status of pending applications. Thus, it is arguably possible to elevate the processing priority of LPFM applications so that the participants in a new Filing Window receive priority over the pending applications from the FM translator Filing Window. However, to the extent this point is merely arguable and inasmuch litigation over the issue should be anticipated, adopting this approach would prove counter-productive to the goal of introducing new LPFM service as quickly and as widely as is practical.

To the extent the FCC decides to embrace the EMF-Prometheus proposal, we urge that, at the very least, the agency provide for a means to proceed on an alternative course and to open a LPFM Filing Window for spectrum rights unaffected by any litigation that ensues.

Because we fear that elevating the processing of LPFM applications in any way to a more favorable status than those afforded already-pending FM translator applications will merely produce litigation and paralysis, the far better course, in our view, is to take the approach that has worked reasonably well previously. That is, the agency should

dismiss applications contemplating noncommercial facilities that are mutually exclusive with applications contemplating commercial facilities.

The volume of pending applications for new translator facilities would ordinarily create an inordinate burden on the agency staff just to perform the necessary engineering studies to determine the make-up of groups of mutually exclusive application, but in this instance, private actors have already submitted extensive studies.⁵ The staff could rely on these studies by adopting them after first allowing for a suitable comment period from the public wherein objections to the particular results of any single study ascertaining the applicants in a MX Group may be brought to the staff's attention and appropriate revisions considered.

Once the MX Groups have been determined, groups contemplating commercial facilities should proceed expeditiously to auction. The market will be the best adjudicator of which facilities will bring the most valuable service to the public, and the U.S. taxpayers will receive the benefit of this process at a time when the Treasury requires every dollar it can find in order to avoid insolvency. Moreover, this approach would not reward the speculative application filing that so many have presumed took place in the translator filing window. Only applicants willing to pay for spectrum rights would participate actively in the auction process. The processing backlog that creates the Translator Issue would thus be eliminated rather quickly.

⁵ See, e.g. *Appendices to Report by Common Frequency*, MM Docket 99-25 (filed January 18, 2011).

Mutually exclusive applications contemplating noncommercial facilities should be resolved via a comparative criteria points system. But it should not be necessary to await final disposition of these cases before announcing a LPFM Filing Window for spectrum that is unarguably available regardless of the outcome of the noncommercial MX Groups. Situations where comparative criteria are likely to be employed will almost certainly be restricted to rural areas where multiple LPFM frequencies are also likely to be available. In the urban areas where LPFM spectrum is less available, so too the need to resort to a points-based analysis would be less likely to exist, inasmuch as urban areas are the most likely to attract interest in applicants proposing commercial facilities and therefore subject to auction procedures.

II. The Protection Issue.

CRA suggests the FCC consider the potential for resolving the Protection Issue by employing a contour protection scheme similar to that employed in NCE FM rules, and to allow applicants the use of directional antennas, as a means of further facilitating the introduction of new service as efficiently as possible. The Commission could “test-run” this approach to resolving the Protection Issue by limiting its use to proposals that seek to provide a LPFM where no more than a single noncommercial full power facility currently provides service to at least ten percent of the population in the proposed low power facility’s 60 dBu.

Allowing any LPFM or FM translator with actual or predicted interference posed by a full power facility to obtain liberal displacement relief would further alleviate the Protection Issue.

Moreover, the agency should require that LPFM and FM translator facilities protect each other.

III. The Viability Issue.

Finally, we urge the FCC to consider the inherent difficulty that LPFM licensees encounter -- even in prosperous economic times -- with respect to their efforts to maintain sustainable operations notwithstanding the limited power restrictions in this service and a corresponding limit to the coverage of potential, much less actual, listeners. The extended economic downturn will further exacerbate this difficulty faced by LPFM applicants. We submit that the 100 watt limit on power for a LPFM is unnecessarily draconian in rural areas where larger coverage areas are possible, and where such larger coverage areas would mitigate the economic challenges faced by rural LPFM operators in particular. With this in mind, the agency should open a filing window for new LPFM facilities where power is authorized up to 250 watts in rural areas. This would significantly improve the prospects for economically viable service.

CONCLUSION

In view of the foregoing, the Commission should adopt these recommended changes, or publish a Further Notice of Proposed Rulemaking, as appropriate to facilitate the efficient and prompt introduction of additional LPFM service. Particularly in the current economy, these steps should maximize available spectrum for new LPFM facilities while facilitating the economic viability of LPFM stations that can build an audience and maintain operations for years to come.

Respectfully submitted,

CATHOLIC RADIO ASSOCIATION

By: /s/
Stuart W. Nolan, Jr.

LegalWorks Apostolate, PLLC
4 Family Life Lane
Front Royal, VA 22630
(540) 622-8070

Its counsel

Dated: June 10, 2011